

# **ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM MINUTES**

**Friday, October 16, 2020 - 10:00 a.m. - 12:00 p.m.**

## **Court Forum Members Present:**

Hon. Lawrence King (Chair)  
Colorado River Indian Com. Court

Hon. Randall Howe (Vice Chair)  
Az. Court of Appeals, Division I

Hon. William Canby, Jr.  
U.S. Court of Appeals, Ninth Circuit

Hon. Douglas Rayes  
U.S. District Court

Hon. Ted Reed  
Coconino County Superior Court

Hon. Margaret Flores  
Pascua Yaqui Trial Court

Maria Morlacci  
Arizona Attorney General's Office

Virjinya Torrez  
State Bar of Arizona

April Olson  
Public member

## **Participants/Visitors Present:**

Sheri Freemont, Casey  
Verna Johnson, ITCA  
Jillian Besancon, USAO  
Sheina Yellowhair, AZ Complete Health  
Judge Scott McDonald, Pima ICWA Court  
Judge Kathleen Quigley, Pima ICWA Court  
Dawn Williams, Arizona Attorney General's Office

Marjorie Eagleman  
Edward Welsh  
Mickey Benally, WMAT  
Alex Samuels, USDOJ

## **Administrative Office of the Courts (AOC) Staff Present:**

David Withey, Chief Counsel, Legal Services  
Amanda McQueen, Legal Specialist  
Liliana Elliott, ASU Law Extern  
Robert Shelley, Court Improvement Program Manager  
Caroline Lauth-Owens, Division Director, CASA  
Shanda Breed, Adult Probation Services

**I. Registration** (Log in to meeting before start time)

**II. Call to Order** - 10:03am

**III. Introduction of members and participants.**

**IV. Approval of Minutes (1/17/2020 & 5/29/2020)**

Judge Rayes moved, Judge Canby second

## **V. Meeting Business**

### **A. Representation of Tribes in State ICWA Proceedings Rule Petition**

The new rule petition was passed and it allows for out-of-state attorneys to appear on behalf of their tribes to represent Indian children in Arizona without paying Bar dues or needing associate counsel. Judges should be aware that these appearances could be happening more frequently in their ICWA cases.

### **B. ICWA Courts**

#### **i. Nationwide - Sheri Freemont:**

13 (10 active) ICWA courts in the US currently. Participants say they feel a different kind of culture and community in the courtroom. Tribal response has been very supportive. They feel they are getting served better. MN will open more soon. Sheri will send us her slide.

#### **ii. Pima County - Judge McDonald and Judge Quigley:**

1 or 2 judges who understand ICWA have been assigned to the Pima ICWA Court to develop consistency and apply it in a better fashion to build those relationships. They started a training committee to look at statistics and procedures. Tohono O'odham and Pascua Yaqui and court staff collaborated on this committee. Trainings are being offered virtually every second Tuesday of each month that are open for anyone to attend. COVID-19 has hindered the ability to establish relationships right now. Future goals: keep developing relationships and refining the process and learn from other ICWA courts. Also, cut down on contested cases through more relationship building and connect the families with more tribal resources.

Mr. Withey: what have you seen as the leading positives in having a separate ICWA court?

Judge McDonald: focus has been on getting ICWA testimony up front to not delay adjudication and also having the same attorneys has been helpful for the court and the parents.

Judge Quigley: it has developed consistency on procedures in the courtroom, like disclosing minute entries to the tribes to give an early idea of what's going on in the case.

Ms. Morlacci: Pima county judges will be exclusively hearing ICWA cases?

Judge McDonald: they have a "one judge, one family" policy. In 2-3 years he anticipates 95% of their caseload will probably be ICWA.

Mr. Withey: how many ICWA cases aren't assigned to ICWA court?

Judge McDonald: There are 122 currently assigned out of 192 total. The remainder will be reassigned as they rotate off instead of reassigning cases in the middle of the process.

Judge Quigley: mediation has been modified to follow ICWA guidelines

Judge King: Question for the future: in anticipation of the Family First Prevention Act, how does that work with ICWA and keeping family together and provide services there as opposed to bringing them out.

Judge Quigley: a goal of the ICWA subcommittee was to incorporate ICWA into the AZ juvenile rules, which was a huge accomplishment. Judge Portley is also on the committee and helping keep that issue front and center.

iii. Other AZ counties?

Judge King asked about Maricopa.

Judge McDonald: There are judges currently working on this in Maricopa but COVID-19 has probably set them back. They have approximately double the amount of cases than Pima.

iv. AFCARS ICWA data – Verna Johnson (2 handouts in the materials)

Data collection for Pima County ICWA courts. This could be an opportunity to look at these data elements that were removed from the final rule and see if it could be part of the Pima County ICWA courts. There's a new database being developed by DCS to collect information. Since May of 2020, data elements were reduced and it is unknown what DCS will do. The state could collect more data if they choose to. Ms. Johnson has made a verbal request to the DCS advisory committee on what the status is of the data elements on their new system.

Mr. Withey: Are some data elements easier to collect or are higher priorities?

Ms. Johnson: several years ago there was a constant stream of issues that were raised so we asked the tribes to prioritize and the workgroup worked with DCS to help streamline those issues.

Judges McDonald and Quigley would like to speak further with her to discuss a set of data elements that they could start collecting. Maybe bring some data people into the next available ICWA committee meeting.

Mr. Shelley also thinks collaborating is a great idea.

v. ICWA Guide update – Liliana Elliott:

AOC's Extern, Ms. Elliott has been working with Professor Atwood and Dawn Williams. A lot of the government and archival websites have been updated in the past few years. All the links have now been updated in the Guide as well as new case law. She will be adding new juvenile rules and comments.

Dawn Williams is appreciative of Ms. Elliott's hard work.

Judge Quigley thanked AOC for their work in keeping this up to date.

## **C. Four Corners Cross-Jurisdictional Conference Workgroup Report**

### **Judge King and David Withey**

Workgroup: Dawn Williams, Judge Little, Judge King and Judge Flores, and from the NM Consortium: Judge Kim McGinnis, State Co-Chair Judge Renee Torres and Tribal Co-Chair Judge Randy Collins. Also representatives from the CA Forum, NV courts, Colorado, TLPI, NAICJA & NCJFCJ.

Last conference call held: 9/25/20

Webinar panels and schedule developed.

### **Discussion:**

Everyone is encouraged to send the Save the Date to anyone who they think may be interested in participating in any of the 5 webinars listed. Registration is open for the first two webinars. The Tribal Jurisdiction webinar on January 8<sup>th</sup> would also be where Federal law would be useful to discuss. If anyone has knowledge or suggestions on this topic please let us know. Judge King may have suggestions and will talk with Mr. Withey later.

Alex Samuels is part of Operation Lady Justice and offered to help. Mr. Samuels also suggested Tony Garcia, retired FBI agent, who is now working in AZ as an MMIP coordinator. Amanda will include Mr. Samuels in the workgroup.

**D. Tribal Court Involuntary Commitment (TCIC) Workgroup Report  
Guardianships and Other Issues – David Withey**

Workgroup: Erin Cohen, Virjinya Torrez, Judge Osterfeld, Judge Little.

Last conference call held: 2/24/20

Action item: Members to provide questions regarding ASH admission and operations.

Ms. Cohen was not present but is available to take questions and then she can help to schedule a meeting with ASH.

Ms. Johnson: doesn't think the inter-tribal council has had any developments or ongoing discussions.

Ms. Torrez: the workgroup has been very interesting and urges people to join.

Judge McDonald: if this is regarding the procedures in 8.272, he would like to join this workgroup.

Mr. Withey – we may want to reach out to some tribal judges to pass the information on to their tribal social services to identify where the issues are.

Ms. Yellowhair: the Regional Behavioral Health Authority would be a good participant in the workgroup, if allowed. AHCCCS also has a tribal Involuntary Commitment liaison who would also be a good asset.

Mr. Withey: we will be in touch with Ms. Yellowhair to invite them when we schedule the next workgroup meeting.

**E. Judicial Education regarding Indian law and Jurisdiction Workgroup Report**

Workgroup: Virjinya Torrez, Judge Osterfeld, and Judge Clyde. (Open for additional workgroup members)

Last conference call held: 1/3/20 @ 11am

Work underway reviewing education materials.

Mr. Withey: will contact Judge Osterfeld to see if he is able to continue on this project.

Ms. Torrez: Juvenile benchbook needs to be added to the current list. Also wanted to add to the list: advisement about the UCCJEA in the family law area and DV on plea advisement. ABA has concerns on judicial education on Indian Law issues and they may be also reaching out to Mr. Withey.

Mr. Withey: There may be a need in each subject area to coordinate with Ms. Torrez. Next step is to draft some proposed language. He will contact our Ed. Services division to connect with the people who are already assigned to work on these manuals. Or, Ms. Torrez and other workgroup volunteers can draft language first and then propose it.

Judge King volunteers to help draft language regarding Special DV Criminal Jurisdiction Courts.

Ms. Williams says she reviews the dependency portion of the juvenile BB regularly and it should be up to date.

Ms. Torrez: UCCJEA language should probably go into the juvenile BB.

Action item: Amanda or David to ask for more workgroup volunteers.

**F. Membership**

We need a new JP or Municipal court member.

Workgroup members: please suggest anyone you think may be interested in becoming a member of this Court Forum, particularly someone with experience with Indian Law. Judge King has ideas and will speak to Mr. Withey about this.

**VI. Future 2021 Court Forum Proposed Meeting Dates**

- **January 29, 2021** (Backup date: February 12, 2021)
- **May 21, 2021** (Backup date: June 11, 2021)
- **September 24, 2021** (Backup date: October 15, 2021)

Please respond if you foresee any major conflicts.

**VII. Open Forum for Discussion of Issues of Concern**

n/a

**ADJOURNED AT 11:51PM**